IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 172 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

JJJJ

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the assessee the following questions have been referred to this court under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the expenditure of Rs. 1,06,819/- in connection with issue of bonus shares was not allowable as revenue expenditure?

2 Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that payment of surtax is not admissible expenditure while computing the total income?"

2. We have heard learned advocate Shri J.P. Shah appearing for the assessee and learned advocate Shri B.B. Naik appearing for the revenue.

3. The learned advocates have fairly submitted that both the questions have been now decided either by the Hon'ble Supreme Court or by this court.

4. So far as the first question is concerned, it pertains to admissibility of expenditure incurred by the assessee for issuing bonus shares. A sum of Rs. 1,06,819/- was spent by the assessee for issuance of bonus shares. It has been now held by the Hon'ble Supreme Court in the case of Brooke Bond India Ltd. v. CIT, 225 ITR 798, that the expenditure incurred by an assessee in connection with issuance of shares would be capital expenditure and, in the circumstances, the expenditure incurred by the assessee cannot be treated as revenue expenditure. In the circumstances, we answer the first question against the assessee and in favour of the revenue.

5. So far as the second question is concerned, it pertains to admissibility of expenditure which was in the nature of payment of surtax. It has been held by the Supreme Court in the case of Smith Kline and French (India) Ltd. and others v. CIT, 219 ITR 581 that surtax which is levied on the profits of a company is not an expenditure deductible from the income. In the

circumstances, the expenditure which has been incurred by the assessee cannot be allowed as revenue expenditure and, therefore, the second question is answered against the assessee and in favour of the revenue.

Thus, the questions referred to us are answered against the assessee and in favour of the revenue. The reference thus stands disposed of with no order as to costs.

(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

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